IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

CRP.No. 453 of 2007(D)

AGAINST THE ORDER DATED 17/08/2006 IN IA.1643/05 IN OS.310/2003 OF PRL.SUB COURT,TRIVANDRUM

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REVN. PETITIONER/PETITIONER/PLAINTIFF:

STATE BANK OF INDIA,
KANNAMMOOLA BRANCH, THIRUVANANTHAPURAM.

BY ADV. SRI.P.V.SURENDRANATH.

RESPONDENTS/COUNTER PETITIONERS/DEFENDANTS:

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1. **A.A.NIZIMUDDIN, T.C.NO.29/675,**
   RAHMATH MANZIL, KITHAMUKKU,
   THIRUVANANTHAPURAM.

2. **NOORJAHAN, W/O.A.A.NIZIMUDDIN,**
   T.C.NO.29/675, RAHMATH MANZIL,
   KAITHAMUKKU, THIRUVANANTHAPURAM.

BY

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 06/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J

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C.R.P. No.453 OF 2007

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Dated this the 6th day of June, 2007

O R D E R

This revision is preferred against the order of the Principal Sub Court, Trivandrum in I.A.No.1643 of 2005 in O.S.No.310 of 2003. I.A.No.1643/2005 is an application filed under Section 151 of the Code of Civil Procedure. A perusal of the order would reveal that the matter was posted for payment of balance court fee and as it was not paid the plaint was rejected. On an earlier occasion, the defendant moved an application to cancel the earlier order passed. That was allowed. Then the present application is filed under Section 151 C.P.C. It is a settled principle that an order passed under Order VII Rule 11 is an appealable one and there are decisions which also say that the parties can approach the court for review of the order. When there are specific provisions such as the right to file an appeal and to file a review, it is not correct to invoke Section 151 C.P.C. and the Apex Court in the decision reported in ***National Institute of M.H. & N.S. v. C.Parameshwara(AIR 2005 SC 242***) has held that under Section 151 the inherent power cannot be exercised so as to nullify the provisions of

Code where Code deals expressly with a particular matter, the provision should normally be regarded as exhaustive. It is not just and proper to entertain an application under Section 151 C.P.C. and therefore I do not find any infirmity in the order passed by the learned Sub Judge.

The Civil Revision Petition lacks merit and the same is dismissed. At the same time, the suit is filed by the State Bank of India and one cannot hold that they were totally negligent or callous in prosecuting the matter. When an appeal is filed with a petition to condone the delay these factors may be considered and after hearing the other side, if possible, a sympathetic view may be taken.

M.N.KRISHNAN, JUDGE

Cdp/-